



April 23, 2018

Via email and first-class mail

Mr. Christopher Korleski
 Director, Water Division
 United States Environmental Protection Agency
 Region 5
 77 West Jackson Boulevard
 Chicago, IL 60604-3590

Dear Mr. Korleski:

RE: USEPA Objection Letter to Issuance of 404 Permit – Submission Number 2NN-5PE0-MT3W, Aquila Resources

Thank you for meeting with us on April 16 to discuss and resolve concerns expressed in your March 8, 2018 United States Environmental Protection Agency (USEPA) Region 5 letter issued to the Michigan Department of Environmental Quality (MDEQ). That letter transmitted comments (framed as “objections”) on the above-referenced MDEQ Wetlands Permit Application (Application) under Section 404(j) of the Clean Water Act (CWA). On March 19, 2018 the MDEQ issued Aquila Resources (Aquila) an additional letter amplifying USEPA’s comments. As stated in USEPA’s March 8, 2018 letter, we understand the MDEQ has 90 days to resolve the issues raised in the letter with Aquila and USEPA.

Aquila responded directly to USEPA’s March 8 letter on April 5 (Foth 2018a).¹ This letter supplements Aquila’s April 5 response by summarizing the substance of our April 16 discussions, including our discussion of permit conditions that MDEQ could incorporate into the permit addressing USEPA’s concerns. Based on these discussions, Aquila understands that the information it has provided in response to the March 8 letter, coupled with MDEQ’s commitment to incorporate the permit conditions set forth below in the wetland permit, resolves USEPA’s objections, allowing MDEQ to move forward with its final review and decision-making on the Application.

Aquila has organized this letter according to comment topics set forth in USEPA’s March 8 letter:

¹ Foth responded separately to MDEQ’s March 19 letter on April 20 (Foth 2018b).



1. Project Description

The documentation contained in the Application and subsequent materials provided by Aquila in response to USEPA and MDEQ comments (Foth 2018a and Foth 2018b) addresses USEPA's comment on project description, final site plan, location of project features and other comments. As we discussed and as noted in documentation provided by Aquila, the proposed site layout contained in the Application is the final project footprint. Aquila will request that the state-issued permit to mine be amended in accordance with the footprint contained in the Application upon issuance of the MDEQ wetlands permit. Furthermore, as noted in Aquila's documentation, there are no plans for underground mining at this time. The amended mining permit will only encompass the open pit mining operation contained in the Application. If Aquila were to propose underground mining at some point in the future, it would be as part of the five-year renewal process for the wetlands permit, and would need to go through a new MDEQ mine permitting process. As such, Aquila acknowledges and can accept USEPA's recommendation of an MDEQ wetland permit condition that stipulates certain conditions if Aquila were to file for a new mining permit for underground mining. Those conditions could include addressing groundwater inflow to the mine and any additional drawdown issues associated with such a potential expanded project, and be further addressed as part of any new mining permit application and/or as part of the new wetland permit that would be required after 5 years.

2. Menominee River Bank Stability

Given the documentation provided by Aquila in response to both MDEQ and USEPA comments, and the fact that MDEQ must sign-off on the final construction and monitoring plan for the cut-off wall and river bank under the MDEQ mining permit, we understand this issue to be resolved. However, Aquila can accept an MDEQ wetland permit condition that requires additional MDEQ Water Resources Division review and approval of the final design and monitoring plan for the cut-off wall and river bank before construction can begin.

3. Protecting Water Quality and the Menominee River

Documentation provided by Aquila has addressed USEPA and MDEQ comments on matters of water quality protection related to the Application. As noted in Aquila's responses (Foth 2018a and Foth 2018b), Aquila will be amending the MDEQ permit to mine and the NPDES permit to conform to the Site plan changes set forth in the Application, as these are the primary permits that regulate the project with respect to water quality protection. Those permits address the following issues:

- Contact water management regulating the collection, re-use, treatment and discharge of treated mine waters.
- Non-contact water management (including a Storm Water Pollution Prevention Plan).



- Spill prevention through:
 - A Spill Prevention, Control and Countermeasures Plan.
 - A Pollution Incident and Prevention Plan.
 - A Cyanide Management Plan.
- Permit conditions on liner requirements for mine waste storage areas including the use of a leak detection system.
- Permit conditions related to MDEQ review and sign-off of final construction plans for the mine waste storage areas, and water management and treatment system.
- Extensive monitoring requirements for groundwater and surface water at the project site and in the surrounding environment.
- Permit conditions requiring additional ongoing data collection related to geochemistry of the mine and mine waters, and hydrogeologic testing of the pit walls that will be factored into final preparation of a mine backfilling and reclamation plan for long-term protection of the Menominee River.

As we discussed, with respect to protection of water quality, none of these conforming amendments (to the extent they are necessary) implicate significant changes in the engineering controls or design of the mine operation reflected in the current version of the NPDES or mine permits. However, Aquila can accept a permit condition in the wetlands permit that requires all final plans as stipulated in the NPDES and mining permits be reviewed and approved by MDEQ staff.

4. Secondary Wetland Impacts

Aquila's response to USEPA comments has addressed federal comments on indirect/secondary impacts. As the review of indirect/secondary impacts is being led by MDEQ, we understand that USEPA is deferring to MDEQ's review of this issue. While the ultimate understanding and mitigation of this issue will be through adaptive management and monitoring that Aquila will accept as a wetland permit condition, we are proposing to resolve this issue as follows:

- Aquila will continue to work with MDEQ to review the indirect impact analysis as it relates to a potential range of impacts, including approximate acreages.
- Any change in impact acreage that MDEQ accepts as necessary for permitting and related mitigation requirement purposes will be reported back to USEPA and Aquila expects that those changes will be factored into an issued wetland permit.
- Aquila will accept permit conditions that details adaptive management and monitoring plans that address:
 - Hydrologic and vegetative monitoring of potentially affected wetlands and specified off-site reference wetlands.



- Metrics based on hydrologic monitoring and vegetative monitoring that will trigger adaptive management through augmenting potentially affected wetlands with water derived from the Menominee River.
- A process for determining the amount of augmentation water that would be added to minimize indirect impacts due to changes in hydrology.
- A plan for monitoring for dust deposition in wetlands adjacent to the site based on visual inspection.

5. Alternatives Analysis

Aquila has provided sufficient documentation regarding project alternatives in their submitted analysis that has satisfied EPA comments.

6. Wetland Preservation and Statutory Requirements

Aquila has provided sufficient documentation regarding the proposed preservation (for mitigation) area to satisfy EPA comments and continues to work with MDEQ on both specific wetland restoration measures and stream mitigation details within the proposed preservation area.

7. Miscellaneous Comments

Adaptive Management

Aquila will continue to work with MDEQ to prepare a detailed Final Adaptive Management and Monitoring Plan that identifies use of reference wetlands, use of vegetative transects, metrics for triggering augmentation, and use of Floristic Quality Assessment tools. If all details cannot be completely addressed before Permit issuance, Aquila will accept a permit condition that includes such an on-going requirement with a specific MDEQ-mandated deadline.

Other Issues

Aquila has provided responses to USEPA's comments and understands, based on our discussions that issues related to the Long Eared Bat, Lake Sturgeon, and Cultural Resources have been satisfactorily addressed.



Based on this letter and the previous documentation provided by Aquila (Foth 2018a and Foth 2018b) to USEPA and MDEQ, Aquila is confident that federal objections have been addressed to USEPA's satisfaction and look forward to your confirmation through communications with MDEQ. Thank you for your consideration on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Hildred", written over a light gray grid background.

Barry Hildred

Cc: Leverett Nelson
 Peter Swenson
 Melanie Burdick
 Theresa Seidel
 Kim Fish